

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON HEALTH & HUMAN SERVICES

Call to Order: By **CHAIRMAN EDITH CLARK**, on January 28, 2003 at 8:09 A.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Edith Clark, Chairman (R)
Sen. John Cobb, Vice Chairman (R)
Rep. Dick Haines (R)
Rep. Joey Jayne (D)
Sen. Bob Keenan (R)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Robert V. Andersen, OBPP
Pat Gervais, Legislative Branch
Lois Steinbeck, Legislative Branch
Sydney Taber, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp refers to material below it.

Committee Business Summary:

Hearing & Date Posted: Quality Assurance Division
Fiscal Services Division
Public Testimony for Child Support
Enforcement Division
Executive Action: None.

{Tape: 1; Side: A; Approx. Time Counter: 0.4 - 3.3}

Lois Steinbeck, Legislative Fiscal Division (LFD), distributed an article from the Great Falls Tribune regarding the reduction of services at In-Care Network of Billings, a Native American company specializing in therapeutic foster care for severely disturbed Native American children. She also handed out information on state actions nationwide that are affecting health budgets. She pointed out, as interesting information, that California is considering eligibility and rate reductions in several categories. Montana is already at the minimums in some of the categories.

EXHIBIT(jhh18a01)

EXHIBIT(jhh18a02)

{Tape: 1; Side: A; Approx. Time Counter: 3.3 - 6.5}

Referring to the news article, **SEN. COBB** expressed concerns about where the children would go given the reductions. **Director Gray** replied that most of them will continue in some level of care. She explained that In-Care is one of a limited number of case managers that the Department has selected. The Department did have meet with In-Care, the Native American Advisory Council, and the children's providers on the reductions that had been made. **SEN. COBB** asked if there would be a cost shift due to the reductions. **Director Gray** said that this is one of the areas in which there is the greatest cost shift. The need is there, but the money is not.

LFD Cost-Shift Concern

{Tape: 1; Side: A; Approx. Time Counter: 6.5 - 10.3}

Ms. Steinbeck expressed concerns about cost shifting in reference to cuts in children's services particularly in mental health. Children in foster care are in the custody of the State. If there is not a Medicaid provider or the Medicaid rates are not high enough, the State must still provide services for the children. Medicaid is the financial responsibility of Addictive and Mental Disorders Division (AMDD). The cost shift occurs if the Foster Care Program has to provide the services at 100 percent general fund. Under those circumstances, AMDD would save \$30 of general fund, but the cost shift would cost the Foster Care Program \$100 because the federal match is lost if children are placed in equivalent services without Medicaid reimbursement. It has been agreed that certain providers will limit the number of Montana children they will take because the rates are below the cost of doing business. This agreement results in fewer beds available to Montana children. If the number of children in Montana exceeds the number of beds available, AMDD has limited the number of children it will pay for in out-of-state care. LFD

will monitor this area for the Subcommittee, but the potential for cost shift is significant. Another LFD concern is the need for integration of Child and Family Services Division (CFSD) into the decisions and discussions between AMDD and providers of services to foster care children. Sometimes the Foster Care Program has been surprised by the changes that were implemented by AMDD regarding Medicaid funded services to foster children.

{Tape: 1; Side: A; Approx. Time Counter: 10.3 - 12}

Director Gray suggested that she provide the Subcommittee with background on the contracts with In-Care Network. In-Care provides good and culturally relevant services, but the costs have gone up dramatically.

SEN. COBB asked if cost shifting is saving them any money and if they would reinstate services. **Director Gray** responded that there will not be as many services, and they will be different. She added that the situation can get even worse.

{Tape: 1; Side: A; Approx. Time Counter: 12 - 13.4}

Ms. Steinbeck observed that as in-state services decline and there are no out-of-state services, AMDD will effectively reduce its expenditures. One would expect that if children are to be served in the State at lower levels of care that there would be higher numbers of in-state providers and higher numbers of in-state services, not the opposite.

Director Gray said that the Department would provide information tomorrow.

HEARING ON QUALITY ASSURANCE DIVISION

{Tape: 1; Side: A; Approx. Time Counter: 13.4 - 21.5}

Mary Dalton, Administrator of the Quality Assurance Division (QAD), distributed a handout and proceeded to review the history of the Quality of Assurance Division, its client base, and primary responsibilities. She then referred Subcommittee members to the section on the Office of Fair Hearings and introduced Burt Freeman, Fiscal Officer, and Bobbie Conrady, Bureau Chief of the Office of Fair Hearings. She reviewed the responsibilities of the Office of Fair Hearings, statistical information on the number of hearing requests and outcomes, and the programs for which hearings are conducted.

EXHIBIT (jhh18a03)

{Tape: 1; Side: A; Approx. Time Counter: 20.8 - 22.2}

Responding to questions from **SEN. STONINGTON, Ms. Dalton** stated that before there was an Office of Fair Hearings, people did not receive their proper rights. The process is a statutory requirement. First there is an administrative review, then a fair hearing. If there is no resolution, it then goes to District Court.

{Tape: 1; Side: A; Approx. Time Counter: 22 - 27.9}

Ms. Conrady explained that the process for child abuse hearings is formulated in the administrative review. When a fair hearing is requested, CFSD requests a panel review. If that panel review does not resolve the issue, then it goes to a fair hearing. If either party is dissatisfied in the fair hearing, then it goes to District Court. The increase in hearings is driven by the fact that fewer cases are settled at administrative review. This is due to administrative disqualification which is initiated by the Department to disqualify individuals from the food stamp program. It is federally mandated that these hearings must be heard regardless the involvement of the individual. Oftentimes, the hearing goes to trial, but will be settled at the last minute. There are many more hearings conducted, but not all result in a fair hearing decision being rendered.

{Tape: 1; Side: A; Approx. Time Counter: 27.9 - 40.3}

In response to questions from **REP. JAYNE, Ms. Conrady** referred to Exhibit 3 and explained that these are hearing requests appealed to the Board of Public Assistance. In 2002, there were 17 decisions which were appealed and only 2 were overturned. She could determine no prevailing reason for the appeals. She further explained that 25 percent of staff time is spent in research of appeals. There are some regulations with which staff deal all the time and are very familiar, others require more research. She continued that there are four hearing officers and one administrative support person in the bureau. In response to a request for the number of fair hearing appeals rendered in this fiscal year, she said that she did not have that information with her. She then added that in FY02 there were 178 public assistance hearings, not including dismissals, and that the figure would be consistent with that.

{Tape: 1; Side: A; Approx. Time Counter: 40.3 - 47.5}

Responding to a question from **SEN. COBB** regarding case backlog, **Ms. Conrady** stated that the backlog is improving, due to the addition of another hearing officer. Over the last four years, they averaged 79 percent timely hearing decisions, whereas in FY02 it had improved to 75 percent. Timeliness ranges from 30 days to 120 days, depending on the type of case. Those receiving Public assistance are aware of the appeal process since there are

clear instructions on how to request a fair hearing on the Adverse Public Assistance notice. More cases are being settled at the court level because recipients are aware of their options and are taking the extra steps to win their cases.

{Tape: 1; Side: A; Approx. Time Counter: 47.5 - 49.5}

{Tape: 1; Side: B; Approx. Time Counter: 0.3 - 1.1}

Director Gray commented that there may appear to be many requests in Medicaid, but there are 100,000 people eligible for Medicaid in a year and there are multiple decisions that could be requested. The number of hearings may look large, but it is a small percentage. The advent of the Internet and web-sites available to people provide support to people. She added that the board is made up of volunteers. She also stated that if the Department is going to lose a case, it will settle.

{Tape: 1; Side: B; Approx. Time Counter: 1.1 - 2.2}

SEN. STONINGTON asked if the recipient has any financial liability in the appeal process. **Ms. Conrady** said that there could be financial responsibility if it is taken to District Court and the judge so decides.

{Tape: 1; Side: B; Approx. Time Counter: 2.2 - 10.2}

Referring to the handout, **Ms. Dalton** returned to her division overview and introduced Carol Jorgensen, Chief of the Program Compliance Bureau. She reviewed the units within the bureau: Fraud and Recovery Unit (FRU), Program Compliance Unit (PCU), Surveillance Utilization and Review (SUR), and Third Party Liability (TPL) and touched on their funding and responsibilities. She went over the statistical information on each unit with regard to recovery of funds, eligibility determination, and payer responsibility.

{Tape: 1; Side: B; Approx. Time Counter: 10.2 - 19.}

In response to a series of questions from **REP. JAYNE**, **Ms. Dalton** explained that there are 32 FTE in the bureau: 12 in SUR, 8 in FRU, 4 in TPL, and 8 in PCU. The fraud and compliance officer positions can require a great deal of travel, so as a cost effectiveness measure they opted to place people in the field so that they would not have to pay for travel. There are eight field officers across the State. They usually share office space with the county public assistance offices. She said that she would bring a breakdown of the costs of maintaining the field officers including time, personnel, and office space tomorrow. She added that the field officers interview for fraud and program compliance as do the staff in Helena. Field officers in Missoula, Great Falls, Billings, and other cities, can go out and interview people in the area to see what information they gave to establish eligibility. Those in TPL and SUR do different work

than the people involved in FRU and PCU. Since it is federally mandated, they would still have to do the work whether there were field officers or not, but they would have to pay for people to travel from Helena.

{Tape: 1; Side: B; Approx. Time Counter: 19 - 22.5}

Ms. Dalton then moved on to the Audit Bureau, which was added at the recommendation of the 2001 legislature to improve Department audits. She introduced Carol Bondy, Audit Bureau Chief and said that the Audit Bureau is focused on the internal audit, but it also performs program compliance audits for all DPHHS programs. She touched on the funding sources, FTE, audit services, and costs.

{Tape: 1; Side: B; Approx. Time Counter: 22.5 - 29}

Ms. Dalton introduced Roy Kemp, the Licensure Bureau Chief. She then reviewed Bureau responsibilities and accomplishments. She went into some depth regarding the revision of day cares rules in 2002. She reviewed the statistical information regarding daycare licensure. Responding to a query from **SEN. COBB** regarding the decline in number of child care facilities, **Ms. Dalton** replied that as there is a decline in the birth rate; they are seeing a decline in daycare providers. The number of children in childcare supported by the Department is going up, but the number of children continues to decline slightly. The same trend is apparent in school enrollments. She added that the number of slots in family and group daycare has gone down, but the number of slots in daycare centers has gone up. It may be a matter of convenience for parents since they do not have to worry about the provider taking time off in a daycare center as they would in a family daycare.

{Tape: 1; Side: B; Approx. Time Counter: 29 - 34.8}

SEN. COBB asked if the budget cuts would cause daycare center closures, and **Ms. Dalton** replied that as long as people will continue to work, they will continue to use slots. She stated that she did not believe that the correlation between reductions and slots is as great as others believe. She further stated that she believes that as long as people have children and want to work, they will need daycare. The Bureau licenses all licensed daycare not just slots paid for by the Department. Some daycare centers may not need licensing if they receive no funding for food and may go underground.

LFD Issue Regarding Daycare

{Tape: 1; Side: B; Approx. Time Counter: 34.8 - 36.8}

Ms. Steinbeck explained that in Child and Family Services Division (CFSD) where childcare reductions are included in the

Executive Budget, there is a projection of a reduction in the number of providers offering services, not just the number of providers foregoing licensure. Looking at the budget as a whole, the Department's position is unclear. If providers go out of business, then the LFD issue would be how many staff are needed to license childcare.

{Tape: 1; Side: B; Approx. Time Counter: 36.8 - 39}

Ms. Dalton referred to her handout and said that it shows the number of inspections actually performed. Referring to routine and complaint inspections, she explained that they do not see every licensed daycare provider every year. They have a target goal of seeing at least 20 percent. She does not believe that the number of staff in this area will go down.

{Tape: 1; Side: B; Approx. Time Counter: 39 - 45}

Responding to questions from **REP. JAYNE**, **Ms. Dalton** stated that state statute mandates that they look at 20 percent of licensed daycares, and they have met the goal. Daycare licensure staff investigate complaints, inspect daycare, do paperwork, and are devoted to daycare licensure. **Becky Fleming-Siebenaler, Supervisor of the Childcare Licensing Program**, stated that there are 11 FTE in childcare licensure, 2 administrative support, and a supervisor.

{Tape: 1; Side: B; Approx. Time Counter: 45 - 49.5}

Responding to a question from **SEN. COBB** regarding revocation of childcare licenses, **Ms. Dalton** said that there were three in the State last year. These had to do with abuse of the natural children of the daycare provider. **Ms. Fleming-Siebenaler** added that the majority of deficiencies are paperwork non-compliance, for example, immunization records may not have not been updated. Occasionally, there will be deficiencies, such as too many children for the number of caregivers or information that is supposed to be posted may not be.

{Tape: 2; Side: A; Approx. Time Counter: 0.5 - 1.7}

Director Gray commented that of all provider groups the Department works with those involved with childcare are the only ones that want more regulation. The on-site reviews keep everyone honest and improve daycare quality.

{Tape: 2; Side: A; Approx. Time Counter: 1.7 - 10.8}

SEN. STONINGTON stated that she is on the Public Health Policy Committee as well and is carrying the omnibus bill for CFSD. CFSD does not want to be responsible for child abuse and neglect investigations in daycare centers. The bill was passed out of committee yesterday and that request was amended out. She asked if it was more appropriate for CFSD to do investigations into

daycare centers or could the licensure bureau do this, since they are already doing oversight. **Director Gray** said that it would require specific training, and added that those who work in social work and licensing have a different focus. She deferred to **Mr. Kemp**, who stated that it is an issue of what each area is supposed to look at. Licensure looks at licensing issues and the minimum requirements that a facility must meet. They do not have statutory authority to interview parents and children in an investigation. They have neither the expertise, training, nor background to conduct such an interview, but are mandatory reporters and would make referrals to the appropriate authorities. **SEN. STONINGTON** then asked how they would handle it if they observed abuse of some sort during a routine licensure inspection. Giving an example of a child striking another child, **Mr. Kemp** said that, from a licensure point of view, they would cite the facility for failing to provide adequate supervision and would refer to the local law authority on the criminal aspect. He further indicated that in the last two years there have been only three cases that would fall into this category. **SEN. STONINGTON** added that it was comforting to hear given the concerns over the budget reductions.

{Tape: 2; Side: A; Approx. Time Counter: 10.8 - 16.9}

Ms. Dalton continued her overview of the Licensure Bureau and reviewed the licensing for: chemical dependency providers, mental health centers, health care facilities, and community residential facilities, as well as various funding sources. She touched on facility surveys and Bureau accomplishments and discussed the evolution of the personal care rules adopted in December 2002 and the draft legislation proposed for this session (SB 420). The Bureau gives out extended licenses and has done a lot of education resulting in a 76 percent reduction in administrative rule cites for noncompliance.

{Tape: 2; Side: A; Approx. Time Counter: 16.9 - 27.9}

Referring to the handout, **REP. JAYNE** asked how many of the licensed facilities are on Indian Reservations. **Ms. Dalton** said that she does not have a breakdown, but they do license facilities across the State including those on reservations. The majority of providers in all facilities in Montana are very good providers. The Bureau has made a concerted effort to inform and involve providers, consumers, and families with regard to all types of facilities. Responding to further questions from **REP. JAYNE**, **Ms. Dalton** said that QAD took a 7 percent decrease in operational costs because everything in the Division centers around providing services. They cut personal services, reduced rent by consolidation, cut Certificate of Need (CON) operational costs, eliminated .5 FTE in Great Falls, and did additional divisional operational cuts, such as not ordering supplies or

computers, travel, and so on. They had a total reduction of \$156,157. In another response to a question from **REP. JAYNE**, she said that the Division has been authorized to give extended three-year and two-year licenses, but it is necessary to inspect periodically due to changes in staffing and administration.

{Tape: 2; Side: A; Approx. Time Counter: 27.9 - 32.2}

SEN. STONINGTON said that since they have had the Eastmont closure discussion, she has been hearing from people in Glendive that there is not appropriate placement in the community for the types of individuals in Eastmont and that group homes do not provide the necessary services or don't do it right. She asked Department response to this. **Director Gray** stated that some of the people in Eastmont will be placed in the community, but that does not mean that all the necessary services will be provided in the community. These individuals will have significant needs which are not easy to take care of, so under those circumstances, they would inspect more often, and if there were complaints they would investigate. One of the means by which they control quality is through licensing of group or residential homes. The secret to ongoing quality assurance is in this division.

{Tape: 2; Side: A; Approx. Time Counter: 32.2 - 34.5}

REP. JAYNE commented that she sees a difference between quality of services and procedure. The majority of the Bureau's function is rules and regulations versus the quality of services received. **Ms. Dalton** said that licensure has minimum standards that every facility must meet and while those standards are tied to quality, the bureau does not judge as to the appropriateness of service.

{Tape: 2; Side: A; Approx. Time Counter: 34.5 - 50}

Ms. Dalton then moved on to the Certification Bureau which reviews facilities with regard to what they must provide in order to receive Medicaid or Medicare payments. She touched on the funding source, staffing, and responsibilities. At present they are going through a performance audit and should receive the preliminary results in a week. Licensing and Certification are not supposed to duplicate services. The federal government does not accept the state licensing review, but the State accepts the federal certification and uses it whenever it can because it receives federal funding. They conduct complaint investigations and surveys, approve nursing and training programs, maintain the database for Clinical Laboratory Improvement Amendments (CLIA), and are the central repository for nursing home and health agency clinical assessments.

Referring to the handout, she noted that there was a large spike between abuse allegations in 2001 and 2002. She said that it is a result of the education of the industry, consumers, and family

members about reports of abuse. There have been significant vacancy savings which has caused a tremendous increase in the workload of those who must investigate the complaints. In CLIA, they have also experienced significant vacancy savings which has caused problems. The preferred CLIA surveyor is a nurse, therefore, they are impacted by the nursing shortage crisis in this Division as well.

{Tape: 2; Side: B; Approx. Time Counter: 0.2 - 4.5}

Discussing DP 76, the \$73,782 annual increase in the lien and estate recovery contract, **Ms. Dalton** said that they calculated that there will be an increase in the new contract. The contract is based on recovery so if there is no recovery they do not have to pay the money out. DP 286 eliminates two FTE for annual savings of \$63,656 general fund. **REP. JAYNE** asked for information on the amount of money in lien and estate recovery, where it is going, and how much is in general fund. **Ms.**

Steinbeck said that there is a certain amount of the recovery that is deposited into general fund, and she would investigate the ongoing level of deposit to general fund with regard to anticipated collections and what has been spent in the budget so far. She will try to get it to the Subcommittee no later than mid-February. **Ms. Dalton** referred **REP. JAYNE** to the handout and said that estate recoveries last year were \$1.539 million. This is money that goes to the general fund, Senior and Long Term Care Division, and 19.4 percent of it is taken as contingency contract to pay for the recovery.

{Tape: 2; Side: B; Approx. Time Counter: 4.5 - 6.5}

Director Gray commented that outplacement of staff has been invaluable to the Department, since it has been difficult enough to hire and retain staff. The ability to call upon local labor pools has helped. The reduction in travel has made their time more valuable, and people are more willing to take the job. Those who are outplaced share office staff with other DPHHS staff throughout the State.

{Tape: 2; Side: B; Approx. Time Counter: 6.5 - 7.2}

CHAIRMAN CLARK asked if critical access pays both cost-based Medicaid and Medicare, and **Ms. Dalton** responded that it pays both.

{Tape: 2; Side: B; Approx. Time Counter: 7.2 - 9.6}

Referring to legislation regarding licensing facilities for the developmentally disabled, **Ms. Steinbeck** asked if such facilities would be subject to the Intensive Care Facility/Mentally Retarded (ICF/MR) tax that the Subcommittee was asked to review by the Department. If they are, this would eliminate the appearance of the State taxing only its own facilities. She also asked if

there were group homes which would be licensed under this category of facility. **Ms. Dalton** said that for federal purposes ICF/MR are split out from nursing homes, but for state licensure they are not so it will make it clearer that they are a separate category of services. The CON has a moratorium on new ICF/MR beds or Intensive Care Facility/Developmentally Disabled (ICF/DD) beds and they do not anticipate that there will be new community beds involved. **Ms. Steinbeck** then observed that, if there are no new community beds, the already established beds will not meet the federal criteria that Chuck Hunter told them about for inclusion in the bill.

LFD Issue Regarding Quality Assurance

{Tape: 2; Side: B; Approx. Time Counter: 9.6 - 14.1}

Referring Subcommittee members to page B-111 and B-112 of the Budget Analysis, **Ms. Steinbeck** said that should the Subcommittee ask the LFD staff to fund overhead of this Division at the same percentage base funding ratio as in FY00, over the biennium, there is a potential general fund reduction of about \$145,000. The Division assumed that more of their costs would be eligible for Medicaid reimbursement at 50-50, and it appears that they had a higher percentage of federal funding. **Ms. Dalton** countered that match is the issue, and they had looked at this historically. Last session they had received a little better match than anticipated, but two sessions ago they ended up short because they did not receive as good match as they had anticipated, so they took a longer range approach and looked at it over the last three budget sessions. It appeared to average out more at 50-50 to them than 47.8 percent. Because it is all operational costs, the Division has very little room for error, and the only way to make up for error is to keep vacancies open longer. She stated that, Although she hopes they won't reduce the budget, if they do, they reduce it to \$86,738. She suggested that the Division discuss this with LFD staff.

LFD Issue on the Use of Alcohol Tax Funds for Certification

{Tape: 2; Side: B; Approx. Time Counter: 14.1 - 16.7}

Referring to page B-113 of the analysis, **Ms. Steinbeck** asserted that she does not believe that the use of alcohol tax funds for certification falls within allowed statutory uses of those funds. The options are to: amend statute, allow administrative or other uses, replace the alcohol tax with general fund, or do nothing. She did not list the option of discontinuation of Chemical Dependency Program licensure because it could result in higher overall costs to the State since licensure is the gateway to becoming a Medicaid provider in that program.

LFD Issue of Inconsistency in the Executive Budget

{Tape: 2; Side: B; Approx. Time Counter: 16.7 - 20.6}

Ms. Steinbeck continued that the Executive Budget in one division states that the reduction in childcare funding will cause a reduction in the number of childcare providers. If that is true, the Subcommittee has the option of looking at the staffing of this Division to see if as many staff are needed to license daycare operators. If daycare operators do not go out of business and people can still access childcare, then the implications in the other division's budget are not as dire.

There was a ten minute break and the meeting reconvened at 10:15.

{Tape: 2; Side: B; Approx. Time Counter: 24.3 - 36.4}

Mick Robinson, Administrator for the Fiscal Services Division (FSD), observed that he has no decision packages and his Division provides no services. The 2001 legislature asked the Department to put more focus on fiscal activities which has been accomplished. They have made significant improvement in the control structure within the agency and also in cash management. He introduced Bill Kloker, the Fiscal Services Bureau Chief, and Marie Matthews, the Fiscal Policy Advisor and credited them with agency improvements. They will continue to focus on making improvements in the system.

Mr. Robinson commented that the division has a relatively small budget of \$5 million per year and only 50 FTE. It deals with general accounting and cash management issues, files federal reports, does cost allocation efforts, and bills institutions. Over 80 percent of the operating costs are statewide costs that are allocated to the agency, and there is very little flexibility within the division. Referring to the Budget Analysis, he noted the difference in the appropriation between FY04 and FY05 and explained that the Legislative Audit appropriation of \$354,000 is a biennial appropriation, so it shows in FY04. They bill during the biennium, so it is moved forward to FY05. There is not much change in the present law adjustments, just a shifting of the actual audit expenditures from FY05 to FY04. He emphasized the improvements of the financial management of the division and said that the division is exempted from reductions in staffing in order to focus on improving the activities.

{Tape: 2; Side: B; Approx. Time Counter: 36.4 - 42.1}

SEN. COBB asked what the major concerns were in fixing the audit recommendations. **Mr. Robinson** referred to the focus of the two major recommendations of the last audit: cash management and the management control. They are ongoing recommendations, so they have a continuous focus on ensuring that they maintain and

improve those areas. They have done a very good job in the cash management area, but not so well in financial management control because of turnover issues. **SEN. COBB** asked for an example of a control mechanism that is not in place that causes him concern. **Mr. Robinson** replied that there are over 150 grants or federal funding activities with which they deal, and one of the areas that they have not handled well is better file documentation for each grant. They are trying to create a better responsibility point for ensuring that federal reports are accurate. It is unclear within DPHHS whether responsibility lies with FSD or the different programs. If FSD is going to be responsible, it will need a higher knowledge of grant requirements, and if program people are going to be responsible, there needs to be a better method of cross-checking.

{Tape: 2; Side: B; Approx. Time Counter: 42.1 - 49.5}

Director Gray expressed public thanks to the division for the extraordinary job that they have done without additional resources. They knew that the audit needed to improve if DPHHS was going to remain credible. She stressed that it is the hope to not have repeat audits.

Ms. Gervais said that LFD has no issue with this division and there are no decision packages or executive actions.

{Tape: 3; Side: A; Approx. Time Counter: 0.3 - 2.4}

REP. JAYNE asked if they could do with fewer FTE. **Mr. Robinson** said that he needs more FTE, not fewer. They could not do their job with fewer. **Director Gray** interposed that this is the only division that was exempted from the vacancy savings because the agency believes that they cannot operate with fewer people. **REP. JAYNE** then asked how the deputy director position has improved the Department. **Director Gray** responded that the position has certainly helped her own mental health, but that the concentration of effort in that position has been on Medicaid. Putting the focus of Medicaid in the deputy director position has created a much better system, direction for the future, and a redesign of the program. She stressed that she does not think that this focus could have been made without that position. She thanked the Subcommittee heartily for giving her the position and added that they have eliminated other positions within the Director's Office. In another follow-up, **REP. JAYNE** asked if there were no deputy Director who would be responsible for Medicaid. **Director Gray** responded that it would be the division directors' responsibility, but she stressed that division heads are focused on their own area. Medicaid permeates all divisions but Child Support Enforcement, which is why it is important that responsibility and decision making power be invested in one place. It has been an effective measure.

{Tape: 3; Side: A; Approx. Time Counter: 5.3 - 7.4}

Bob Andersen, Office of Budget and Program Planning (OBPP), said that the former budget director told him that this position was essential given the size of the Department and the complexity of the decisions that needed to be made. He gave his personal opinion that the position is essential to the Department.

{Tape: 3; Side: A; Approx. Time Counter: 7.4 - 9.6}

Director Gray added that historically there has been a deputy director position in the Department. **REP. JAYNE** further asked if Chuck Hunter's new responsibilities also included Medicaid.

Director Gray responded that the refinance does deal with Medicaid since much of it is entitlement. She added that it is the one place where they can get additional federal money. Chuck Hunter is responsible for finding more money and refinancing the state money to bring in more federal money. John Chappuis's responsibility is to oversee the entire Medicaid Program.

**HEARING ON PUBLIC TESTIMONY ON CHILD SUPPORT AND ENFORCEMENT
DIVISION**

{Tape: 3; Side: A; Approx. Time Counter: 10.4 - 24.6}

Judy Smith, WORD, Montana Fair Share Network, reviewed the programs her organization provides: low-income home building, high-wage training, home ownership classes, and family resource centers. The organization sees many families working their way out of poverty. Two things that are important to families working their way out of poverty are childcare and availability of child support. Child support payments help low-income, single-parent families build income packages. She explained how her organization helps people buy homes and said that it is important to pass more money through to the family. There is research that indicates that there is less incentive for an individual owing money to his family to pay it if he thinks that the State will receive the money. Most people using Child Support Enforcement Division (CSED) services are people who are leaving Temporary Assistance for Needy Families (TANF), and she asked that they not penalize them for receiving child support. She asked them to support CSED, but also to come up with other ways to collect money that these people need so much. She then handed out information on the Fair Share Network and said that they have determined that not only should they appear before this Subcommittee, but also before the Revenue and Taxation Committees. She touched on the evaluation criteria for developing revenue proposals and said that they need to look at a broader base for the funding of this agency. **Ms. Smith** said that she would be happy to pay more in taxes since passing the cost on to a more general base makes more sense to her than penalizing

low-income individuals. She then handed out a paper on the fiscal impacts of various tax policy options.

EXHIBIT(jhh18a04)

EXHIBIT(jhh18a05)

{Tape: 3; Side: A; Approx. Time Counter: 24.6 - 27.6}

Mary Caferro testified on behalf of Working for Equality and Economic Liberty (WEEL) and her family. She is a single mother who does not receive child support and stressed the importance of child support payments for the well-being of children and for the financial independence of single-parent families. She opposes the fee bill, but supports funding for CSED.

{Tape: 3; Side: A; Approx. Time Counter: 27.6 - 32.7}

SEN. STONINGTON said that she goes back and forth on the fee bill. While she agrees that people need to be moved out of poverty and the fee is inequitable, she also sees another side to it. Since it is not mandatory that people use CSED to collect money, a transaction fee seems acceptable. If they were not receiving the services, they would receive nothing. She asked how they can justify a free service when the division has scarce dollars. She added that she does think that \$7 per check is exorbitant, especially for those who receive weekly checks, but if there were some other schedule, she thinks that it might be fair. She asked **Ms. Smith** for her comments.

{Tape: 3; Side: A; Approx. Time Counter: 32.7 - 36.3}

Ms. Smith responded that the person who pays the fee is not the person at fault. She again stated that she would like to see responsibility placed over a broader base by taxation. Research has shown that when a fee is involved there is less motivation for the obligor to pay. She added that there may be a lawsuit involved. There are a lot of other costs that should be factored in when considering the proposed legislation.

{Tape: 3; Side: A; Approx. Time Counter: 36.3 - 40.1}

REP. JAYNE asked **Ms. Caferro** if, in her experience as an advocate, it was true that many of the children were also special needs children. **Ms. Caferro** said that it is true that issues overlap.

{Tape: 3; Side: A; Approx. Time Counter: 40.1 - 50.5}

SEN. STONINGTON asked **Lonnie Olson, CSED**, if District Courts stipulate in divorce decrees that people have to go through CSED for child support collections. **Mr. Olson** replied that this is not the case in Montana. Income for child support obligation is mandated under law unless there is a specific exemption written into the divorce decree. The decision to use services of the

CSED is strictly that of the obligee. When there is an income withholding order put in place, the federal government requires that it be paid through the State. Those payments have nothing to do with CSED except as a repository for deposits and distributor of payments, and there is no fee involved in this. The theory under which fees is approached is one of contract. If someone signs up for the service, they can say they do not want the service anymore. The only restriction on that would be if there were public benefits paid. Those receiving TANF benefits must assign payment to the division, but are not charged a fee.

{Tape: 3; Side: B; Approx. Time Counter: 0.2 - 8.5}

Responding to a question from **SEN. COBB**, **Mr. Olson** stated that when a person leaves CSED that person then will receive the child support payment. **Mr. Olson** distributed information on alternatives to the \$7 fee, a one-day breakdown of caseload and payment, a general legal bureau overview, and a draft letter for Commissioner Heller of the Office of Child Support Enforcement (OCSE) for their consideration. Responding to another question, he said that his gut feeling is that most people receive two child support payments a month since most people are paid twice a month.

EXHIBIT(jhh18a06)

EXHIBIT(jhh18a07)

EXHIBIT(jhh18a08)

EXHIBIT(jhh18a09)

{Tape: 3; Side: B; Approx. Time Counter: 8.5 - 22}

Responding to a series of questions from **REP. JAYNE**, **Mr. Olson** referred to the breakdown (Exhibit 6) and said that it is a one-day snapshot and shows single payments, not obligor payments. He added that the number of payments cannot be equated to open cases. In further discussion, he stated that there is over \$180 million in unpaid child support in Montana. **Mr. Olson** said that the two components of appropriations for his budget are the direct costs of the division and an appropriation in Operations and Technology Division (OTD) for the payment of the System for Enforcement and Recovery of Child Support (SEARCHS) costs. The budget is somewhat over \$10 million per year. The best means of collection is garnishing wages. Many individuals are unemployed or work at low-wage jobs and cannot pay child support. He remarked that there is also a portion of the population who assiduously avoid payment and will do whatever they can to avoid responsibility. He explained the method used to determine the \$7 fee and added that it is directly tied to the fiscal note in the fee bill.

{Tape: 3; Side: B; Approx. Time Counter: 22.3 - 23.4}

In further explanation, **Director Gray** said that the sheet (Exhibit 6) just shows the payments that were sent out. However, they are actually collecting more since some people may send in child support and the money may have been used to reduce the amount of money paid for TANF. **Mr. Olson** said that some disbursements that they make are not part of the calculation, for example, the recapture of TANF.

{Tape: 3; Side: B; Approx. Time Counter: 23.7 - 27.8}

In response to a question from **SEN. COBB**, **Mr. Olson** said that the CSED collects about 59 percent of current support owed. **SEN. COBB** then asked what percentage of those who owe money are the deadbeats who actively avoid paying child support. **Mr. Olson** said that he did not know that there had been any assessment of that. **Chad Dexter, CSED**, said that there were 30,000 obligor cases last year where there was debt owed. Of that number there were 11,000 who did not make one payment.

{Tape: 3; Side: B; Approx. Time Counter: 27.8 - 32.6}

REP. JAYNE said that there is question as to whether the State has jurisdiction over obligors on Indian reservations. She asked whether the system is set up to exclude Indian obligors. **Mr. Olson** said they do have a policy regarding such obligors and do not intend to enforce or establish an order to enforce on a tribal member residing within the boundaries of a tribal nation. The fees would be tied to actual payments so there would be no cases where they would obtain money without proper jurisdiction. **REP. JAYNE** then asked how many of the 40,000 current obligor cases would be cases over which the State has no jurisdiction, but are still on the books. **Mr. Olson** replied that there were 3,000.

{Tape: 3; Side: B; Approx. Time Counter: 32.6 - 40}

SEN. COBB asked if the 3,000 were included in the 11,000 from whom nothing was collected. **Mr. Dexter** said that in those circumstances they would not have an order established. **SEN. COBB** then asked if there is any collaboration between the tribes and the Department to help them collect. **Mr. Olson** said that he had a meeting with a representative of the Confederated Salish and Kootenai (CSK) tribe several weeks ago, and the CSK are interested in establishing their own IV-D system. CSED shared with them their internal and operating manuals and did some contact work with the State's paternity testing organization. CSED has also offered to assist in anyway that they can. There are seven tribal IV-D systems nationally, and the number continues to grow. **SEN. COBB** asked if there is a mechanism to help the other tribes on this issue in tribal courts. **Mr. Olson**

stated that if there is no IV-D agency within the tribe, there is no entity to receive such a referral. **REP. JAYNE** said that it is the tribal legal office that says the State has no jurisdiction and would send it back to them. An obligee has to go to tribal court to establish a child support enforcement order.

{Tape: 3; Side: B; Approx. Time Counter: 40 - 49}

CHAIRMAN CLARK referred to a letter of support from the Subcommittee to the Office of Child Support Enforcement (Exhibit 8). **Director Gray** agreed to send it to the LFD staff for revision and added that Senator Baucus had drafted a letter of support as well. **SEN. KEENAN** offered another letter of support from the Senate President, and **Director Gray** said that she would be happy to have another letter.

{Tape: 4; Side: A; Approx. Time Counter: 0.4 - 1.5}

Referring to the Draft Bill which she had handed out, **Ms. Gervais** suggested that Subcommittee members take it with them, read it, and plan to discuss the bill draft the next day.

EXHIBIT(jhh18a10)

A sheet asking that legislators vote no on SB 72 was presented.

EXHIBIT(jhh18a11)

ADJOURNMENT

Adjournment: 11:33 A.M.

REP. EDITH CLARK, Chairman

SYDNEY TABER, Secretary

EC/ST

EXHIBIT (jhh18aad)